

# Tax as an Alternative Legal Protection for Business Enterprises in E-Commerce

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## Abstract

Legal protection is usually only one-sided on the consumer. But this time businesses in the trade of electronic transactions or commonly referred to as e-commerce should also get the same legal protection in accordance rights. This is an alternative legal protection by the tax assessment in commercial transactions of e-commerce. Tax provides legal certainty in e-commerce trading because the taxes businesses are protected from foreign competition product price.

**Keywords:** *Legal Protection, e-Commerce, Business Communities, Consumers, Tax*

## Introduction

According to the Trade Act entrepreneurs meaning that each individual Indonesian citizen or entity that is a legal entity or not a legal entity established and domiciled in the territory of the Republic of Indonesia which carries on business in the field of trade. A business actor in the definition shows that everyone who manufacture or market goods/services it can be said as entrepreneurs. Trade a trend today is trading through electronic transactions (hereinafter referred to as e-commerce). The trade gives easiness to consumers as well, especially to businesses. Because the existence of e-commerce trade, businesses do not need to create complicated license and rent a place or buy a place with a very high price for their business trade as occurs in conventional trade.

E-commerce trading easier and faster because enough to capitalize the electronic media and the Internet, businesses can expand its business with various types of goods/services desired. Here is the view of Abu Bakar Munir, which distinguishes e-commerce from conventional trade:<sup>5</sup>

“There are several features distinguish roommates electronic commerce from business conducted by traditional means. In particular: electronic commerce establishes a global marketplace, where traditional geographic boundaries are not only ignored; they are simply irrelevant suite...”

The development of information technology and always will affect economic growth. As acknowledged by Peter Dicken which states:

“Technological change is at the heart of the process of economic growth and economic development”

As admitted by Alfin Tofler as follows:<sup>6</sup>

“Technological change is the prime motors capitalism; the great growling engine of change”<sup>7</sup>

Commerce e-commerce provide benefits and problems in new legal phenomena, which occur due to the traditional legal paradigm shift as a whole have not been accommodated by traditional law.<sup>8</sup> In this scope,

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<sup>5</sup> Abu Bakar Munir, 1999, *Cyberlaw: Policies and Challenges*, Butterworths Asia, p. 205-206

<sup>6</sup> Peter Dicken, 2000, *Global Shift: Transforming the World Economy*, Third Edition, London: Paul Chapman Publishing Ltd, p.146

<sup>7</sup> *Ibid.* Learn more about Alvin Toffler's view can be read in Alfin Tofler, *Future Shock*, Pan Publishing Ltd, London, 1971

<sup>8</sup> M.Arsyad Sanusi, 2007, *Convergence of Law and Information Technology*, The Indonesian Research, p.113

Edmon Makarim explained that the traditional legal paradigm shift, including those not yet adequately accommodated by traditional law occurs in three ways, namely:<sup>1</sup>

- a. The shift of characters written into the unwritten;
- b. The shift from a form of the document to be non-document; and;
- c. The shift from conventional to e-character based.

These differences became evident that e-commerce should be dealt with specifically in view of the shift is a very important shift in the world of conventional trade. Where everyone is today preferred a faster, convenient, and practical. The desire is manifested in e-commerce trade in the future will surely become one of the trade that is in demand by the public good economy class down, middle and upper.

In contrast to ordinary trading transactions, trading e-commerce has some very special characteristics, namely:<sup>2</sup>

- a. Transactions indefinitely
- b. anonymous transaction
- c. Digital and non-digital Transactions
- d. Product intangibles

Factors that encourage the rapid growth of e-commerce itself, among others:<sup>3</sup>

- a. E-commerce has the ability to reach more customers and any time the customer can access all the information continuously;
- b. E-commerce can encourage the creativity of the sellers quickly and precisely and distribution of the information submitted in progress periodically;
- c. E-commerce can create high efficiency, low and informative;
- d. E-commerce can improve customer satisfaction, with a service that is fast, easy, safe and accurate.<sup>4</sup>

With the factors of the rapid development of e-commerce, the following is the process in e-commerce transactions:<sup>5</sup>

- a. Electronic presentation (Website Development) for products and services.
- b. Booking directly and availability of the bill.
- c. Automation safely customer accounts (either account numbers or credit card numbers).
- d. Payments made by Direct (on-line) and transaction handling.

It is inevitable, eventually by looking e-commerce trading into one trade because the demand in terms of the price of goods sold via e-commerce is cheaper. Prices are cheaper than the conventional trade for businesses in e-commerce trading is not taxed. This is very different to businesses engaged in conventional trade. Conventional trade business operators wherever they strive certainly taxed. Therefore, the e-commerce trading is apparent unfair competition between e-commerce businesses with conventional businesses. Unfair competition could also occur between e-commerce businesses with e-commerce businesses other. Unfair competition between businesses e-commerce due to the goods sold at the same quality but the price can vary. Unfair competition shows that there is no coordination in the trade of e-commerce. In addition, although there has been an association that holds businesses in e-commerce trading still have not been able to collect all businesses to be able to coexist with healthy as producer or businesses that sell goods.

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<sup>1</sup> Edmon Makarim the view as expressed in the socialization of the Draft Law on Information and Electronic Transactions (ITE bill) in the Faculty of Law, University of Indonesia, Jakarta, September 7, 2006

<sup>2</sup> Nofie Iman, 2001, [www.nofieiman.com](http://www.nofieiman.com)

<sup>3</sup> Didik M. Arief & Elisatris Gultom, 2005, *Cyber Law "Legal Aspects of Information Technology"*, PT.Rafika Aditama, Bandung, p. 166

<sup>4</sup> Riyeke Ustadiyanto, 2001, *Framework E-Commerce*, Andi, Yogyakarta, p. 138

<sup>5</sup> Wahana Komputer, *Komputer*, 2006, *Mastering Web Programming with PHP 5*, Andi

The absence of clear regulation in e-commerce trade is expected in this case the government can intervene in order to control and protect the trade market in e-commerce, especially in the domestic market. Some government intervention is the control in the goods market. Controlling the goods market is expected to give a good impact for the business or manufacturer. In addition, the government also provides good leverage in trade e-commerce by providing protection or protection against the price of goods produced by domestic producers of the domestic or foreign manufacturer's invasion. Another control of the government is to maintain the stability price. Hopefully with price stability can maintain a balance between the prices of the stock (balance of supply and demand) goods in the goods market. This government can be referred to as the common control of the national economy, especially in the goods market, because of the level of trade and money supply is closely connected with the rate of inflation once the economy. Market goods described the meeting between demand and supply of the goods/services. The role of the last government is to increase economic growth. Economic development is a process of increase in total income and per capita income by taking into account the existence of a growing population and accompanied by a fundamental change in the economic structure of a country and the distribution of income for the population of a country.

Problems often arise for businesses is the unfair competition between e-commerce businesses with conventional business operators as in e-commerce trading does not require a complicated business license and in terms of the price of goods sold via e-commerce cheaper for actors these efforts are not taxed. Another problem is businesses cannot be protected from foreign competition product price. So that the legal protection of the domestic market becomes less. This can lead to citizens who have small businesses medium may lose the actual profit on the other hand can be a huge profit when the domestic market is preferred.

## 2. Discussion

Legal protection in e-commerce trading is felt still lacking especially concerning the legal protection to businesses. Because in this case has a lot of that going on the defense of consumers who feel harmed by trade e-commerce. Witnessing these facts, the author would like to discuss how the tax assessment in e-commerce trading is also a good impact on businesses in e-commerce trade. To be able to live a healthy business activity need to be a balance between the two, both for businesses and consumers. Rights and obligations of both are also to be equally fulfilled. But it is undeniable that both businesses and consumers need legal protection in order to provide a sense of security and comfort in their business activities, especially in e-commerce trade.

Here are some of the rights of entrepreneurs who should get legal protection:<sup>1</sup>

- a. The right to receive payment in accordance with an agreement on the conditions and exchange of goods and/or services traded;
- b. The right to obtain legal protection of consumer action bad faith;
- c. The right to defend themselves properly on the legal settlement of consumer disputes;
- d. The right to rehabilitation of reputation if legally proven that the consumer loss is not caused by the goods and / or services traded;
- e. Rights are governed role in the provisions of other legislation.

The rights of the business operators should also be considered as a form of legal protection to businesses. These rights can be granted to businesses where there is a clear legal certainty in e-commerce trading arrangements. One alternative to be able to protect businesses is the tax assessment. The tax assessment is not only a burden to businesses but also provide benefits or good impact for the business itself.

E-commerce transactions related to international taxation as well as cross-border transactions (cross border transactions) others; the right of a country on the income taxation of international transactions depends on the

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<sup>1</sup> See provisions of article 6 of Law Consumer Protection (BFL)

type of income. There is a consensus of the experts of international taxation with respect to the right of taxation (taxing right) on income from international transactions (cross border transactions) as follows:<sup>1</sup>

- a) The right to levy taxes on income should basically be given to the country of residence. That is the state in which an individual who receives income that reside or country in which the business entity earning it is domiciled or established. According to Brian J Arnold and Michael J McIntyre  
“A country may impose a tax Also on income because of a nexus between the country and the person earning the income. A jurisdictional claim over income based on a nexus between the country making that claim and the person subject to the tax is called residence jurisdiction”.<sup>2</sup>

State adheres to taxation based on domicile usually adheres to the principles of the world wide income, meaning that the subject tax domiciled in that country are taxed on all income derived from any country in the world. Determination of domicile becomes very important because the subject will be considered a tax resident of a country if it meets certain conditions where the conditions are very dependent on the laws of each country. Other countries, other than the country of residence may also levy taxes, if the state is home to the sources of income, the state is home to the source of income is called the source country.

- b) The type of business income, the source country may levy taxes is a state in which it does business activities through a permanent establishment that is outside the country of domicile country where the establishment of branch offices, factories, workshops or other places that are permanent, of which business activities were carried out. According to Brian J Arnold, and Michael J McIntyre:  
“Maybe taxable income under the tax law of a country because of the nexus between that country and the activities that generated the income. According to international usage, a jurisdictional claim based on such a nexus is called Source jurisdiction”.

Prof. Dr Smeets in his *De Economische Betekenis der Belastingen* said understanding the following taxes: Tax is payable to the government achievements through general norms, and which can be imposed, in the absence of contra which can be shown in terms of the individual; the intention is to finance government spending.<sup>3</sup> This implies that the tax is actually a norm that must be met so that the absence of taxes, the government may be assisted by the citizens to support the facilities that should be available to the public itself.

There are three basic principles that were developed in the taxation of e-commerce transactions, namely:<sup>4</sup>

- a. Treatment of taxation for transactions conducted electronically should not be treated differently from transactions conducted electronically not.
- b. If the tax regulations currently allow to be applied to e-commerce transactions, then this provision is applied.
- c. There is an agreement between the tax regimes of each country in order to avoid double taxation conflict.

A policy regarding taxation in e-commerce trading is expected to assist communities in their respective countries. And can push the country economies. Determination of tax expected to be an alternative legal protection for businesses in e-commerce trade, realized by having a TIN (Taxpayer Identification Number) to get a clear identity as businesses in e-commerce trade. Similar to conventional trade every business are required to have a tax ID as proof that business is already running its obligations as good citizens as well as businesses that are responsible.

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<sup>1</sup> John Hutagaol..et.al, op.cit, p. 131

<sup>2</sup> Brian J Arnold and Michael J, *International Tax Primer Second Edition*, (Netherlands: Kluwer Law International) p. 15

<sup>3</sup> Adriani in Santoso Brotodihardjo, 1991, *Introduction to Tax Law*, PT. Eresco Bandung, p. 4

<sup>4</sup> Carol A. Dunahoo, *Foreword, fiscal fed actualiteiten, Caught in the Web: the Tax and Legal Implications of Electronic Commerce*, (Deventer: Price Waterhouse, 1998) p. 5-6

Based on the Ministry of Finance of the Republic of Indonesia in this case the tax authorities that issued the Director General of Taxation SE No. 20/PJ/2013 on Procedures for Granting Registration and Tax Registration Number, Business Reporting and VAT collector, Elimination Taxpayer Identification Number and Revocation VAT collector, and Change Data and Transfer of Taxpayer. Here is Article 2, paragraph 1 of the procedure for registration and tax number.<sup>1</sup> TIN will look a person's identity and address of the seller's business location with a clear and definite in accordance with article 2, paragraph 2, and article 2, paragraph 4 No. 20/PJ/2013.<sup>2</sup> Inclusion TIN every page of every business is a form of protection to businesses in the competition. So if businesses do not have a TIN, it can be possible business actors perform the same trade, giving rise to unfair competition between businesses in e-commerce trade.

TIN have a positive impact on businesses and governments. The existence of TIN have a positive impact, the first is to make all trades compete with the healthy and the absence of external products that can compete with local products. The positive impact of the second medium businesses sector/micro Enterprises Small and Medium Enterprises (SMEs) Involved in the movement participated real economy so as to advance the goals of economic growth, both upward or downward medium businesses to Encourage the market to better economic growth without WHO feel a great effort that can Contribute to the bottom but also medium enterprises can make a major contribution to economic progress.

Commerce e-commerce that has not been taxed as was already done in the conventional trading activities make cheating in the business world. Therefore taxation is indispensable in building a balanced business world, both traditional and modern. The need for tax assessment in e-commerce is not solely for the benefit of the government, but the impact or influence of both Also will be felt by the businesses themselves.

In this study, the governments represented by the DGT (Directorate General of Taxes) do not give a burden to society. But it was a good impact in the trade of e-commerce. One good effect given by the government to businesses is as follows:

- (1) Provide a good influence in controlling the market.
- (2) The existence of government intervention in the market for goods can maintain price stability in the domestic production is taxed as a tool the government can give effect to the existing market. The influence is to provide high taxes for businesses that are overseas so controlling the domestic market or in the country can be given more flexibility in the trade of goods.
- (3) Business actors as the producer can maintain healthy competition in the business of e-commerce activities. Competition in the e-commerce business activities can be said to be unhealthy. Why is not healthy? Because the goods were identical shape and type can be sold at a low price, and some are sold at a price that should be. It is making unfair competition. Because actually in the business world, where business as a seller sells goods the same type and shape, at least the price is not much or nearly the same as other sellers.
- (4) Minimize unhealthy competition. With the tax assessment, employers who cheat or cannot do a good relationship with the law will be in the black list of pages that during this time he sells.
- (5) Actors medium enterprises and medium-sized businesses and above can together provide a boost to the economy in modern commerce, such as e-commerce.
- (6) The tax benefits for the seller are to give permission to trade in Indonesian territory in accordance stipulated in the Act. The government can regulate economic growth through tax policy. With the function set, the tax

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<sup>1</sup> Article 2, paragraph 1 SE No. 20/PJ/2013: Taxpayers who have met the objective and subjective requirements in accordance with the provisions of the legislation in the field of taxation, must enroll in the KPP whose jurisdiction covers the place of residence or domicile, and place of business taxpayer, and the taxpayer is given registration number tax.

<sup>2</sup> Article 2, paragraph 2 SE No. 20/PJ/2013: Residence or domicile as referred to in paragraph (1) is the residence or domicile according to the actual situation. Article 2, paragraph 4: Individual Tax Payer Specific Employers, in addition shall enroll at KPP whose jurisdiction covers the residence taxpayer, are also required to register with the tax office that jurisdiction covers the business activities of the Taxpayer.

could be used as a means to an end. For example, in order that the investment, both domestic and abroad, given the wide range of tax relief. In order to protect domestic production, the government set a high import duty on foreign products. If there are no taxes so many foreign companies will come to Indonesia and led to the sale of products in the country suffered a loss.

Unwittingly for this benefit gained by the community with the taxation is the existence of a variety of public facilities such as roads, transportation and so forth. It is in fact the tax is something that is regarded as an expense in the overall trade transactions. The load there, both to businesses and the burden on consumers. However, in this study, the authors see not all of the trade transaction to be taxed as a bad impact for businesses, but also a good impact. Good impact of the implementation of the tax in an e-commerce trading transactions provide a clear legal certainty also in commerce e-commerce and also obtain legal protection for businesses and consumers, especially in general.

### 3. Conclusions and Recommendations

The role of government with taxation in the e-commerce trade is expected to maintain order, comfort for the business. Business operators also get a clear legal protection against unfair business competition against other fellow entrepreneurs in e-commerce. In addition, businesses can also provide better services to consumers. So with the determination of tax not only puts a burden on businesses, but also gives the advantage, so that the rights of businesses can also be fulfilled.

What is needed to establish the tax is the awareness of businesses in e-commerce is also the role of government in e-commerce trade. So, that the determination of the tax can provide legal protection and increase economic growth to improve the welfare of the people. And the determination must be realized in order not to lose more tax revenue for the state. Thus the Trade Act should be added the new regulations regarding taxation in the existing special chapter on e-commerce

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